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10/539,984	06/19/2005	Albertus J. N. Van Breemen	NL021474	6378

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

EXAMINER	
BOUKNIGHT, STEVEN M	
ART UNIT	PAPER NUMBER
4121	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/539,984	VAN BREEMEN, ALBERTUS J. N.	
	Examiner	Art Unit	
	STEVEN BOUKNIGHT	4121	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 June 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *19 June 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *06/19/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Construction

Claims 11-15 are construed under 112, 6th paragraph. The phrase "means for" is present throughout the claims and includes functional language not tied to any structure, which places the claims to be construed under 112, 6th paragraph.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is no corresponding structure recited in the specification for the various "means for..." elements in claims 11-15, and that absent any structure in the specification the “system” and its elements of claims 11-15 are construed as mere software. Also, there is no antecedent basis for the claimed "computer readable medium" in claims 16-20.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim(s) 2, 11-15 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "emotional" in conjunction with “an emotional interface” in claims 2 and 17 is a relative term which renders the claims indefinite. The term "emotional" is not defined by the claim and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim(s) 11-15 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01.

Regarding claims 11-15, the word means is preceded by the words "for obtaining at least one music preference", "for accessing at least one network based music file...", "for comparing the music attribute to the music preference", "for downloading the music file based on the comparison”, “for viewing a progression of network downloading music files”, “for downloading a second music file based on the first music file…”, “for providing interaction with the network downloading of music files as a function of a graphical user interface” and “for providing interaction with the network downloading of music files as a function of a voice command”, to use a “means” clause to recite a claim element as a means for performing a specified function. However, “The system…” of claims 11-15 is directed solely to a system of software and thus does not possess any structure. Therefore, it is impossible to determine the equivalents of the elements with any structure in the specification due to no corresponding statutory structural support for performing these actions as required by 35 U.S.C. 112, sixth paragraph.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim(s) 1-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

With regard to claims 1-10, "a method for network downloading of music files…" is directed to a process that recites an abstract idea. A method may qualify as a 35 U.S.C. 101 process when the process either [1] was tied to a particular apparatus or [2] operated to change materials to a different state or thing. Claims 1-10 fail to perform either one of these processes. Clearly the claimed method does not operate to change materials to a different state or thing. Further, because the method steps can be performed by a person, they are clearly not sufficiently tied to a particular apparatus. Therefore the claims are not directed to a statutory process. See *In re Comiskey*, 499 F.3d 1365, 84 USPQ2d 1670 (CAFC 2007)

With regard to claims 11-15, "The system for network downloading of music files…" is directed solely to a system of software per se and thus does not qualify as a process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim(s) 1, 3-11, 13-16, and 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Perkes et al. (US 20020194601), hereinafter referred to as Perkes.

With regard to claim 1, the Perkes reference teaches a method for network downloading of music files comprising: obtaining at least one music preference (see paragraph 0043 wherein personalized consumer preferences are collected in a profiling function based on downloadable/streaming music) ; accessing at least one network based music file, the music file including at least one music attribute (see paragraphs 0047 and 0049, wherein an Exchange agent is used to determine a collection of web-based selected content that can be a musical file containing metadata such as the artist name like N'Sync or genre of the musical file); comparing the music attribute to the music preference (see bottom of paragraph 0047-0049, wherein the consumer's music preferences is used as a predictive model matched to the selected content); and downloading the music file based on the comparison (see paragraph 0049, wherein the invention downloads the selected content determined from the comparison to the consumer's preference).

With regard to claim 3, the Perkes reference teaches the method of claim 1 further comprising, downloading a second music file based on the first music file, as a function of a complete album feature (see middle of paragraph 0045 and 0049, wherein

the music content items can include the listed album and based on predictive models using the consumer's preferences, content types of the album might be of interest to the consumer and downloaded).

With regard to claim 4, the Perkes reference teaches the method of claim 1 further comprising, providing interaction with the network downloading of music files as a function of a graphical user interface (see paragraph 0041 and figures 1 and 2, wherein a user interface is provided for new users to enter in information as the basis of a profile and existing users can access an exchange agent to view selected content).

With regard to claim 5, the Perkes reference teaches the method of claim 1 further comprising, providing interaction with the network downloading of music files as a function of a voice command (see paragraph 0208, wherein a user interface can be initiated by a mouse click or by a voice command).

With regard to claim 6, the Perkes reference teaches the method of claim 1 wherein the music preference is selected from a group consisting of an artist name, year of recording, label of distributor, title of song, and title of album (see paragraphs 0043 and 0045, wherein content items contain metadata related to content type, description, music title, artist, album, and decade of release).

With regard to claim 7, the Perkes reference teaches the method of claim 1 wherein the music preference is obtained from a user preference collection (see paragraph 0043 wherein personalized consumer/user preferences are collected in a profiling function based on downloadable/streaming music).

With regard to claim 8, the Perkes reference teaches The method of claim 1 wherein comparing the music attribute to the music preference is a function of a music collection agent (see bottom of paragraph 0047-0049, wherein an exchange agent evaluates the consumer's music preferences and using predictive models matches it to the determined selected content).

With regard to claim 9, the Perkes reference teaches the method of claim 1 wherein accessing the network based music file is a function of an agent selected from a group consisting of a freed agent (see paragraph 0045 wherein there is an application within the Exchange agent that stores a description of content items including listing album information), a chart agent (see paragraph 0045 wherein there is an application within the Exchange agent that collects chart standing information), and an opennap agent (see paragraph 0049 wherein there is an application within the Exchange agent that downloads the selected content from the internet).

With regard to claim 10, the Perkes reference teaches the method of claim 1 wherein the music file is downloaded to a music playing device (see paragraph 0042, wherein the inventive software takes the form of a Universal Media Player on the consumer's computer, where a musical file is downloaded [paragraph 0049], and acts as a player for all digital entertainment viewed on the computer.

With regard to claim 11, the Perkes reference teaches A system for network downloading of music files (see paragraph 0042 wherein the system is a computer) comprising: means for obtaining at least one music preference (see paragraph 0043 wherein personalized consumer preferences are collected in a profiling function based

on downloadable/streaming music); means for accessing at least one network based music file, the music file including at least one music attribute (see paragraphs 0047 and 0049, wherein an Exchange agent is used to determine a collection of web-based selected content that can be a musical file containing metadata such as the artist name like N'Sync or genre of the musical file); means for comparing the music attribute to the music preference (see bottom of paragraph 0047-0049, wherein the consumer's music preferences is used as a predictive model matched to the selected content); and means for downloading the music file based on the comparison (see paragraph 0049, wherein the invention downloads the selected content determined from the comparison to the consumer's preference).

With regard to claim 13, the Perkes reference teaches the system of claim 11 further comprising means for downloading a second music file based on the first music file, as a function of a complete album feature (see middle of paragraph 0045 and 0049, wherein the music content items can include the listed album and based on predictive models using the consumer's preferences, content types of the album might be of interest to the consumer and downloaded).

With regard to claim 14, the Perkes reference teaches The system of claim 11 further comprising means for providing interaction with the network downloading of music files as a function of a graphical user interface (see paragraph 0041 and figures 1 and 2, wherein a user interface is provided for new users to enter in information as the basis of a profile and existing users can access an exchange agent to view selected content).

With regard to claim 15, the Perkes reference teaches the system of claim 11 further comprising means for providing interaction with the network downloading of music files as a function of a voice command (see paragraph 0208, wherein a user interface can be initiated by a mouse click or by a voice command).

With regard to claim 16, the Perkes reference teaches a computer readable medium storing a computer program for network downloading of music files (see paragraph 0227, wherein the invention may be implemented using computer programming having computer-readable code means within one or more computer – readable media) comprising: computer readable code for obtaining at least one music preference (see paragraph 0043 wherein personalized consumer preferences are collected in a profiling function based on downloadable/streaming music); computer readable code for accessing at least one network based music file, the music file including at least one music attribute (see paragraphs 0047 and 0049, wherein an Exchange agent is used to determine a collection of web-based selected content that can be a musical file containing metadata such as the artist name like N'Sync or genre of the musical file); computer readable code for comparing the music attribute to the music preference (see bottom of paragraph 0047-0049, wherein the consumer's music preferences is used as a predictive model matched to the selected content); and computer readable code for downloading the music file based on the comparison (see paragraph 0049, wherein the invention downloads the selected content determined from the comparison to the consumer's preference).

With regard to claim 18, the Perkes reference teaches the computer readable medium of claim 16 further comprising computer readable code for downloading a second music file based on the first music file, as a function of a complete album feature (see middle of paragraph 0045 and 0049, wherein the music content items can include the listed album and based on predictive models using the consumer's preferences, content types of the album might be of interest to the consumer and downloaded).

With regard to claim 19, the Perkes reference teaches the computer readable medium of claim 16 further comprising computer readable code for providing interaction with the network downloading of music files as a function of a graphical user interface (see paragraph 0041 and figures 1 and 2, wherein a user interface is provided for new users to enter in information as the basis of a profile and existing users can access an exchange agent to view selected content).

With regard to claim 20, the Perkes reference teaches the computer readable medium of claim 16 further comprising computer readable code for providing interaction with the network downloading of music files as a function of a voice command (see paragraph 0208, wherein a user interface can be initiated by a mouse click or by a voice command).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

> invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim(s) 2, 12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkes as applied to claims 1,11 and 16 above, and further in view of Ruebenstrunk.

With regard to claims 2, 12 and 17, the Perkes reference teaches all of the limitations of claims 1, 11 and 16 from which these claims depend. However, the Perkes refrence does not teach the method of claim 1 further comprising, viewing a progression of network downloading of music files as a function of an emotional interface, the system of claim 11 further comprising means for viewing a progression of network downloading of music files, and the computer readable medium of claim 16 further comprising computer readable code for viewing a progression of network downloading of music files as a function of an emotional interface. The Ruebenstrunk reference does teach these limitations. According to Reubenstrunk, emotional computers are used to convey humanlike feelings. Also, a computationally tractable model of emotions as a consequence of certain cognitions, events and interpretations was developed by Ortony, Clore and Collins and aimed to be implemented in a computer or some type of Artificial Intelligence (AI) system. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have combined the teachings of Perkes and the Ruebenstrunk reference to communicate humanlike emotions through a computer system as reaction to positive and negative events regarding downloading music. Because there are numerous aspects going into the status of music gathering, an emotional interface easily provides

a way of conveying the status or progression through humanlike emotions because such communication would not require reading and thus be able to communicate with young children or those speaking other languages, and by not having to be read can communicate faster than by a textual message.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kaplan (US 5,963,916), Abecassis (US 6,192,340), Fritsch (US 6,233,682), Qureshey et al. (US 20020002039), Eyal et al. (US 20020023084), Gross (US 6,372,974), Perkes et al. (US 20020194601), Holtz et al. (US 6,760,916), Juszkiewicz (US 20040199654), Rowe (US 20040225605), Robbin et al. (US 20040268451), and Nixon (US 20060026106) all teach methods of receiving a music preference and obtaining a musical file based off the music preference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN BOUKNIGHT whose telephone number is (571)270-5701. The examiner can normally be reached on Monday-Thursday and alternative Fridays from 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David L. Robertson can be reached on (571)272-4186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. B./
Examiner, Art Unit 4121

/David L. Robertson/
Supervisory Patent Examiner
Art Unit 4121